

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

DIANE BACA,

Plaintiff,

v.

No: 1:16-cv-1128-KRS

NANCY A. BERRYHILL,  
Acting Commissioner of Social  
Security,

Defendant.

**ORDER GRANTING STIPULATION TO AWARD OF ATTORNEY FEES  
UNDER THE EQUAL ACCESS TO JUSTICE ACT**

**THIS MATTER** comes before the Court upon the parties' Stipulation of Award of Attorney Fees Under the Equal Access to Justice Act ("EAJA") (Doc. 33), filed March 21, 2018. The Court, being fully advised in the premises, **FINDS** that the motion is well-taken and should be **GRANTED**.

**IT IS, THEREFORE, ORDERED** that the motion is **GRANTED**, and **Plaintiff is awarded \$4,800.00 in attorney fees and \$400.00 in costs** pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d). *See Astrue v. Ratliff*, 560 U.S. 586, 591-93 (2010) (EAJA fees are paid to the prevailing party, not the attorney).

Payment of this amount shall constitute a complete release from and bar to any and all claims Plaintiff may have relating to EAJA fees in connection with this action. The parties further agree that the EAJA award is without prejudice to Plaintiff's attorney's right to seek attorney fees pursuant to 42 U.S.C. § 406(b), subject to the offset provisions of the EAJA. *See* 28 U.S.C. § 2412(c)(1) (2006).

**IT IS FURTHER ORDERED** that, if Plaintiff's counsel receives attorney fees under both the EAJA and 42 U.S.C. § 406(b) of the Social Security Act, Plaintiff's counsel shall refund the smaller award to Plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).

A handwritten signature in black ink, reading "Kevin Sweazea". The signature is written in a cursive, flowing style. The first name "Kevin" is written in a slightly larger, more prominent script than the last name "Sweazea". The signature is positioned above a horizontal line.

---

KEVIN R. SWEAZE  
UNITED STATES MAGISTRATE JUDGE